

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

NATHAN FOUNTAINE,

Plaintiff,

V.

MICHAEL J. ASTRUE, Commissioner of  
Social Security

Defendant.

Case No. C10-5953 JRC

## ORDER TO SHOW CAUSE

This matter has been referred to Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1) and Local Magistrates Rule MJR 4(a)(4); and, as authorized by Mathews, Secretary of H.E.W. v. Weber, 423 U.S. 261, 271-72 (1976). This matter comes before the Court on plaintiff's filing of an Application to Proceed in Forma Pauperis and a Complaint to review and set aside a decision of the Social Security Administration pursuant to 42 U.S.C. § 405(g). The Application is improper because it is not filled out or signed by plaintiff.

## BACKGROUND

On December 31, 2010, plaintiff filed an Application to Proceed in Forma Pauperis, along with an attached Complaint. (ECF No. 1.) In his application, in response to the question “[a]re you presently employed,” plaintiff indicates “unknown.” (ECF No. 1, p. 1.) In the boxes

1 where plaintiff is to indicate “yes” or “no” as to whether he has received any money from  
 2 specific named sources, none of the “yes” or “no” boxes are checked for any of the questions.  
 3 (Id.) Further, in the boxes where plaintiff is required to indicate if he owns or has any interest in  
 4 real estate, stocks, bonds, notes, automobiles, or other valuable property, is the following  
 5 response: “[u]nknown. At last contact plaintiff was homeless and we [the attorney and staff]  
 6 could not contact for update or signature.” (ECF No. 1, p. 2.) Finally, at the bottom of the  
 7 motion, where plaintiff is supposed to place his signature and indicate that he “declare[s] under  
 8 penalty of perjury that the foregoing is true and correct,” no signature is present. (Id.) Similarly,  
 9 plaintiff’s Written Consent for Payment of Costs from any Recovery under Local Rule CR3(b)  
 10 does not contain plaintiff’s signature. (See ECF No. 1, p. 3.)

12 DISCUSSION

13 According to 28 U.S.C. § 1915(a)(1), “any court of the United States may authorize the  
 14 commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or  
 15 appeal therein, without prepayment of fees or security therefor, by a person who submits an  
 16 affidavit that includes a statement of all assets . . . .” By requesting the court to be allowed to  
 17 proceed in forma pauperis, plaintiff is asking the government to incur the filing fee because he  
 18 alleges an inability “to pay such fees.” See 28 U.S.C. § 1915(a)(1).

20 In addition, Local Rule CR 3(b) provides in relevant part:

22 At the time application is made under 28 U.S.C. § 1915 or other applicable  
 23 acts of Congress, for leave to commence any civil action or to file any petition or  
 24 motion without being required to prepay fees and costs or give security for them,  
 25 each petitioner, movant or plaintiff shall:

26 (1) Complete the in forma pauperis affidavit approved for use in this  
 27 district; and

(2) File a written consent that the recovery, if any, in the action, to such  
 28 amount as the court may direct, shall be paid to the clerk who may pay therefrom  
 29 all unpaid fees and costs taxed against the plaintiff, and to his attorney the amount  
 30 which the court allows or approves as compensation for the attorney’s services.

ORDER - 2

1 Plaintiff's Application is incomplete and is not signed by plaintiff. (See ECF No. 1, pp. 1-3.) In  
2 addition, the written consent provided to the Court has been completed on behalf of plaintiff by  
3 his attorney, and the consent is unsigned. (See id.)  
4

5 Plaintiff has not signed the affidavit and therefore is not in compliance with 28 U.S.C. §  
6 1915(a)(1) or with Local Rule CR 3(b)(2). Cf. United States v. Wilkus, 875 F.2d 649, 654 (7th  
7 Cir. 1989) (where alleged affiant could not recall how his signature appeared on the affidavit, the  
8 trial judge's finding "that there was insufficient evidence to show its accuracy", and ruling of  
9 inadmissibility, was proper).  
10

11 Additionally, even if the affidavit were signed, the information necessary to make this  
12 decision is not included in the application. (See ECF No. 1, pp. 1-3.)  
13

14 Accordingly, the Court hereby ORDERS as follows:  
15

16 (1) Plaintiff shall seek to cure these deficiencies by filing no later than **February 11,**  
17 **2011**, (a) an application answered and signed by plaintiff and (b) the signed written  
18 consent required by Local Rule CR 3(b)(2), or by paying the proper filing fee.  
19

20 **Failure to cure these deficiencies by the above date will be deemed a failure to  
21 prosecute this matter properly and the Court will recommend dismissal of this  
22 matter.**

23 (2) The Clerk is directed to send a copy of this Order to counsel for plaintiff.  
24

25 DATED this 20th day of January, 2011.  
26

  
24  
25 J. Richard Creatura  
26 United States Magistrate Judge